



PUBLIC NOTICE

Federal Communications Commission
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DA 14-867

Released: June 23, 2014

WIRELESS TELECOMMUNICATIONS BUREAU AND PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEK COMMENT ON LAND MOBILE COMMUNICATIONS COUNCIL PETITION FOR RULEMAKING REGARDING CONDITIONAL LICENSING AUTHORITY ABOVE 470 MHZ, AND DENY REQUEST FOR EXTENSION OF TEMPORARY WAIVER

RM-11722

Comment Date: July 23, 2014

Reply Comment Date: August 7, 2014

On May 15, 2014, the Land Mobile Communications Council (LMCC) filed a petition for rulemaking seeking expansion of conditional licensing authority under Section 90.159(b)¹ of the Commission's Rules to the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands.² With this *Public Notice*, we seek comment on LMCC's petition for rulemaking. We also deny LMCC's request for a blanket waiver pending the resolution of the rulemaking proceeding.

Pursuant to Section 90.159(b), most applicants proposing to operate a new private land mobile radio (PLMR) station or modify an existing PLMR station below 470 MHz that are required to include a showing of frequency coordination are permitted to operate the proposed station during the pendency of the application for a period of up to 180 days, beginning ten days after the application is submitted to the Commission.³ This conditional authority is not available for applicants in the PLMR frequency bands above 470 MHz. When the Commission enacted the rule granting conditional authority below 470 MHz,

¹ 47 C.F.R. § 90.159(b).

² Land Mobile Communications Council, Petition for Rulemaking In the Matter of Expansion of Conditional Licensing Authority Under FCC Rule Section 90.159 of Part 90 Bands: 470-512 MHz, 800 MHz, and 900 MHz (filed May 15, 2014) (Petition).

³ See 47 C.F.R. § 90.159(b), (b)(6). This conditional authority applies only to applications that meet the following requirements: the proposed station location is south of Line A and west of Line C; the proposed antenna structure has previously been determined by the Federal Aviation Administration to pose no hazard to aviation safety, or the proposed structure height does not exceed 6.1 meters above ground level or above an existing man-made structure; grant of the application does not require a waiver of the Commission's rules; the proposed facility will not have a significant environmental effect; and the proposed station is not in a quiet zone. 47 C.F.R. § 90.159(b)(1)-(5).

it stated that it was being conservative in the implementation of conditional authority, and could consider expanding the concept in the future if experience demonstrated that such action was appropriate.⁴

LMCC asserts that the rules governing frequency assignments in the bands below 470 MHz no longer justify distinguishing between below- and above-470 MHz for authorizing conditional licensing, because over time the rules governing frequency assignments below 470 MHz have become more technically challenging than the separation criteria in the 800/900 MHz bands, and certain rules requiring individualized review of 800/900 MHz applications have been eliminated for many systems. It argues that expansion of conditional authority above 470 MHz is now appropriate.

LMCC also states that recent experience with conditional licensing authority in the PLMR bands above 470 MHz supports the proposed rule change. Specifically, in 2013, the Mobility Division (Division) of the Wireless Telecommunications Bureau (WTB) granted the request of the Enterprise Wireless Alliance (EWA) for a temporary waiver request of Section 90.159 to permit applicants for new or modified Industrial/Business Pool stations in the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands to operate while the applications are pending.⁵ The Division granted the waiver until December 31, 2013 in order to provide relief to Industrial/Business Pool applicants that were incurring hardship due to unusually long WTB processing times resulting from applications related to the January 1, 2013 narrowbanding deadline.⁶ The Division subsequently extended the waiver until June 30, 2014 because WTB's processing times, while improved, had not returned to normal.⁷

In addition, LMCC requests that the waiver remain in effect pending the resolution of its rulemaking petition, and be extended to Public Safety Pool applicants.⁸ We deny this request. The waiver granted in response to the EWA request was a temporary waiver addressing a temporary situation. As LMCC acknowledges, WTB's processing times are no longer substantially longer than normal.⁹ Consequently, no further extension of the waiver is warranted. Industrial/Business Pool applications filed on or before June 30, 2014 will be authorized for up to 180 days of conditional authorization in accordance with the Division's orders, but applications filed thereafter will receive no waiver relief.

We seek comment on LMCC's petition for rulemaking. Commenters should address whether the public interest would be served by allowing qualified applicants in the frequency bands above 470 MHz conditional licensing authority. They should also address whether any rule change should apply to both the Industrial/Business Pool and the Public Safety Pool.

Procedural Matters

⁴ See Amendment of Part 90 of the Commission's Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations, *Report and Order*, PR Docket No. 88-567, 4 FCC Rcd 8280, 8283 ¶ 25 (1989).

⁵ See Enterprise Wireless Alliance, *Order*, 28 FCC 13910, 13911 ¶ 6 (WTB MD 2013).

⁶ See *id.* at 13911 ¶ 5.

⁷ See Enterprise Wireless Alliance, *Order*, 28 FCC 17103, 17104 ¶¶ 4-6 (WTB MD 2013).

⁸ See Petition at 6-7.

⁹ See *id.* at 6 n.8.

Interested parties may file comments and reply comments in response to the waiver request on or before the dates listed on the first page of this *Public Notice*. All pleadings must reference RM-11722. Parties may file comments using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁰

- Electronic Filers: File comments electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and two copies of each filing.

Send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Address filings to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Deliver hand-delivered or messenger-delivered paper filings to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554 between 8:00 AM and 7:00 PM. Use rubber bands or fasteners to hold deliveries together. Dispose of all envelopes before entering the building.
- Send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Send U.S. Postal Service first-class, Express, and Priority mail to 445 12th Street, SW, Washington DC 20554.

Parties are requested to send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com.

The requests, and comments and reply comments filed in response to this *Public Notice* are available for viewing via the Commission's Electronic Comment Filing System (ECFS), <http://www.fcc.gov/cgb/ecfs>, by entering the docket number, RM-11722. The documents also will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail FCC@BCPIWEB.com.

Alternate formats of this *Public Notice* (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY), or send an e-mail to fcc504@fcc.gov.

¹⁰ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, GC Docket No. 97-113, 13 FCC Rcd 11322 (1998).

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, contact Mr. Melvin Spann of the Wireless Telecommunications Bureau at (202) 418-1333, or via e-mail at Melvin.Spann@fcc.gov or Roberto Mussenden of the Public Safety and Homeland Security Bureau, Policy Division, (202) 418-1428, Roberto.Mussenden@fcc.gov.

Action by the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau.

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¹¹ See 47 C.F.R. §§ 1.1200(a), 1.1206.